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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

S. N. G. J. J. J.  
P. II

FILE: K-190560

DATE: November 30, 1977

MATTER OF: Hydraulic Technology, Inc.

## DIGEST:

Protest filed more than 10 working days after basis for protest became known or more than 10 working days after protester's receipt of notification of adverse agency action on protest initially filed with agency is untimely and ineligible for consideration on merits.

Hydraulic Technology, Inc. has protested the award of a contract to another firm under invitation for bids No. DAAA09-77-B-6596, issued by the U.S. Army Armament Materiel Readiness Command, Rock Island, Illinois, for ignition timing lights. Hydraulics contends that its bid, without first article approval, was the lowest submitted under the solicitation, and that a quality assurance representative erroneously determined that Hydraulic was ineligible for waiver of first article approval.

The record shows that subsequent to Hydraulic's receipt of notification of the award to a higher bidder, Hydraulic's president telephoned the contracting officer on October 11, 1977 and stated that an error had been committed since his firm's bid price was low without first article approval. By return telephone call the next day, it was explained that it had been determined that the first article requirement could not be waived for Hydraulic. The first formal written protest filed was the protester's telegram of October 28, 1977 which was received in our Office October 31, 1977.

The protest is untimely. Our Bid Protest Procedures, 4 C.F.R. Part 20 (1977), require, in pertinent part, that protests filed initially with a contracting agency must be filed with this Office within 10 days of the protester's receipt of notification of adverse agency action. 4 C.F.R. § 20.2(a). Protests filed directly with this Office must be

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"filed" not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. 20.2(b)(2). The term "filed" as used in 4 C.F.R. 20.2 means receipt in the agency or the General Accounting Office, as the case may be. We believe that Hydraulic learned of the grounds for protest when it was informed on October 12 that it was not regarded as eligible for waiver of first article. Thus, it was required to protest either to this Office or to the contracting agency, within 10 days. It did neither, and instead pursued the matter through the Small Business Administration. Thus, the protest filed here on October 31 is untimely.

We note that Hydraulic refers to its October 11 telephone call to the contracting officer as a "protest." If we were to regard that telephone call as a protest, then we would also view the information provided to Hydraulic on the following day as constituting notification of adverse agency action on Hydraulic's oral protest, since it appears that the agency was in effect denying the "protest" by informing Hydraulic of its ineligibility for first article waiver. Accordingly, the protest subsequently filed here also would have had to been filed within 10 days of October 12 to be considered timely.

The protest is dismissed.

  
Paul G. Dembling  
General Counsel